

# Maryland Register

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## Title 11 DEPARTMENT OF TRANSPORTATION

### Subtitle 07 MARYLAND TRANSPORTATION AUTHORITY

#### **11.07.06 Public-Private Partnership Program**

*Authority: State Finance and Procurement Article, §§10A-101 et seq., 10A-201 et seq., 10A-301 et seq., 10A-401 et seq., and 11-203(h), Annotated Code of Maryland*

#### **Notice of Proposed Action**

[15-234-P]

The Executive Director of the Maryland Transportation Authority proposes to repeal existing Regulations **.01 — .14** under existing **COMAR 11.07.06 Transportation Public-Private Partnership** and adopt new Regulations **.01 — .10** under a new chapter, **COMAR 11.07.06 Public-Private Partnership Program**.

This action was considered by the Chairman and members of the Maryland Transportation Authority (MDTA) at an open meeting held on May 28, 2015, notice of which was given through placement on the MDTA website ([www.mdtamaryland.gov](http://www.mdtamaryland.gov)). The MDTA Board will consider and approve final regulations at the conclusion of the Maryland Register public comment period. The MDTA Board meeting will be open to the public. Notice of the meeting will be placed on the MDTA website ([www.mdtamaryland.gov](http://www.mdtamaryland.gov)).

#### **Statement of Purpose**

The purpose of this action is to repeal existing regulations and adopt new regulations to clarify the process of public-private partnerships pursuant to H.B. 560, Ch. 5, Acts of 2013.

#### **Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

#### **Estimate of Economic Impact**

The proposed action has no economic impact.

#### **Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

#### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

#### **Opportunity for Public Comment**

Comments may be sent to Patrick A. Fleming, Manager of Government Relations, Maryland Transportation Authority, 2310 Broening Highway, Baltimore, MD 21224, or call 410-537-1089, or email to [pfleming2@mdta.maryland.gov](mailto:pfleming2@mdta.maryland.gov), or fax to 410-537-5657. Comments will be accepted through September 21, 2015. A public hearing has not been scheduled.

#### **Open Meeting**

Final action on the proposal will be considered by the Maryland Transportation Authority during a public meeting to be held on September 24, 2015, at 9 a.m., 2310 Broening Hwy., Baltimore, MD 21224.

#### **.01 Purpose.**

*The purpose of this chapter is to:*

*A. Establish a Maryland Transportation Authority Public-Private Partnership Program (Program) to enhance the State's transportation systems, assets, functions, and infrastructure; and*

*B. Describe and provide a process for the development, solicitation, evaluation, award, and delivery of public-private partnerships in the Authority's Program.*

#### **.02 Scope.**

A. In accordance with State Finance and Procurement Article, §10A-101(g)(3), Annotated Code of Maryland, the Authority is a reporting agency that may establish public-private partnerships and execute public-private partnership agreements in connection with any public infrastructure assets for which it is responsible.

B. Within the Authority, the Executive Director shall be responsible for administering the Program.

### **.03 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Authority" means the Maryland Transportation Authority.

(2) "Budget committees" has the meaning stated in State Finance and Procurement Article, §10A-101, Annotated Code of Maryland.

(3) "Chairman" has the meaning stated in Transportation Article, §4-202(a), Annotated Code of Maryland.

(4) "Department" means the Maryland Department of Transportation and its modal administrations.

(5) "Executive" means the Executive Director of the Authority.

(6) "Industry forum" means a presolicitation information gathering event that may include public and private sector participants.

(7) "Industry review meeting" means a meeting during the solicitation process with shortlisted private entities.

(8) "Members of the Authority" means those persons that compose the Authority Board and are appointed in accordance with Transportation Article, §4-202(b), Annotated Code of Maryland.

(9) "Multistep solicitation process" means a public-private partnership solicitation process that includes some or all of the following steps:

(a) Issuance of a request for qualifications;

(b) Preproposal conference;

(c) Issuance of a draft request for proposals;

(d) Industry review meetings; and

(e) Issuance of a final request for proposals.

(10) "Private entity" has the meaning stated in State Finance and Procurement Article, §10A-101, Annotated Code of Maryland.

(11) "Program" means the structure, process, methodology, and terms and conditions applicable to the Authority's development, solicitation, evaluation, award, and delivery of transportation public infrastructure assets for which it is responsible in accordance with State Finance and Procurement Article, §10A-101, Annotated Code of Maryland.

(12) "Public infrastructure asset" has the meaning stated in State Finance and Procurement Article, §10A-101, Annotated Code of Maryland.

(13) "Public notice of solicitation" has the meaning stated in State Finance and Procurement Article, §10A-101, Annotated Code of Maryland.

(14) "Public-private partnership" has the meaning stated in State Finance and Procurement Article, §10A-101, Annotated Code of Maryland.

(15) "Public-private partnership candidate concept application" means the documentation that must be submitted to the Steering Committee to initiate and inform a high-level review of a public-private partnership concept generated from within the Authority.

(16) "Reporting agency" has the meaning stated in State Finance and Procurement Article, §10A-101, Annotated Code of Maryland.

(17) "Responsibility determination" has the meaning stated in State Finance and Procurement Article, §10A-101, Annotated Code of Maryland.

(18) "Shortlisted private entity" means a private entity that has been both qualified based on its response to a request for qualifications and selected as one of the highest qualified private entities, allowing them to continue in the solicitation process.

(19) "Steering Committee" is the Authority's Transportation Public-Private Partnership Steering Committee established to advise the Chairman and members of the Authority on the structure and implementation of the Authority's Program and composed of Authority and other State employees identified by the Executive Director.

### **.04 Transportation Public-Private Partnerships Steering Committee.**

A. The Steering Committee is established to advise the Chairman and members of the Authority on the structure and implementation of the Authority's Program, including, but not limited to, the following:

(1) Identifying potential public-private partnership opportunities for screening;

(2) Screening of public-private partnership opportunities, including both high-level and detailed-level;

(3) Prioritization of public-private partnership opportunities for solicitation;

(4) Developing presolicitation and solicitation plans and processes for public-private partnerships;

(5) Ongoing monitoring of public-private partnerships; and

(6) Communication and coordination with other State reporting agencies.

- B. The Steering Committee shall be composed of Authority and other State employees as identified by the Executive Director.*
- C. The Steering Committee shall be chaired by an Authority employee who is identified by the Executive Director and referred to as the Steering Committee chair.*

**.05 Identification Process.**

*A. Public-private partnership concepts and opportunities will be identified within the Authority and through other State, regional, local, and municipal processes.*

*(1) Potential public-private partnership concepts and opportunities may be identified through periodic transportation planning, communication, and evaluation processes that are carried out within the Authority, the Department, and through other State, regional, local, and municipal processes, including but not limited to:*

- (a) The Consolidated Transportation Program;*
- (b) The Statewide Transportation Improvement Program;*
- (c) Long-range transportation plans developed by metropolitan planning organizations; and*
- (d) County Priority Letters.*

*(2) Public-Private Partnership Candidate Concept Application.*

*(a) To initiate a high-level review, screening, and policy analysis of a proposed public-private partnership concept or opportunity, a Public-Private Partnership Candidate Concept Application shall be submitted to the Steering Committee chair by an internal sponsor.*

*(b) A Public-Private Partnership Candidate Concept Application may be submitted at any time, and may be supplemented with additional information as needed.*

*(c) Relevant supporting information or documentation shall be included in the submission of the Public-Private Partnership Candidate Concept Application, to the extent such information is available, including but not limited to:*

- (i) Preliminary ideas of public-private partnership scope, schedule, and project lifecycle considerations;*
- (ii) Preliminary qualitative evaluation of relevant benefits and cost;*
- (iii) Preliminary description of financial concepts;*
- (iv) Rationale for a public-private partnership delivery method relative to a conventional project delivery approach;*

*and*

*(v) Additional information, as necessary, to support a high-level screening process, as outlined in Regulation .06C(1) of this chapter.*

*(d) The format and required contents of the Public-Private Partnership Candidate Concept Application will be:*

- (i) Developed and updated as needed by the Steering Committee; and*
- (ii) Approved by the Executive Director, Chairman, and members of the Authority.*

*B. Unsolicited Proposals to the Authority.*

*(1) In accordance with State Finance and Procurement Article, §10A-301, Annotated Code of Maryland, the Authority is permitted to accept, reject, or evaluate unsolicited proposals for public-private partnerships that will assist the Authority in implementing its functions in a manner consistent with State policy.*

*(2) Assets not defined as a transportation facilities project under Transportation Article, §4-101(h), Annotated Code of Maryland, are not covered by the Authority's Program and should be submitted to the appropriate State agency.*

*(3) An unsolicited proposal may be submitted at any time.*

*(4) An unsolicited proposal shall:*

- (a) Be sealed and delivered to the Authority's Headquarters to the attention of the Executive Director, bearing the private entity's name, address, and the words "Public-Private Partnership Unsolicited Proposal" clearly on the outside; and*
- (b) Consist of 15 hardcopies and 1 electronic copy.*

*(5) Unsolicited Informational Meetings.*

*(a) Private entities may request meetings with the Steering Committee to discuss potential unsolicited proposals prior to submission.*

*(b) Requests for unsolicited informational meetings shall be submitted to the Steering Committee chair.*

*(c) The Steering Committee is not required to grant meetings in response to a request.*

*(d) During unsolicited informational meetings, the Steering Committee may provide informal feedback and comments to the private entity.*

*(e) The primary purpose of unsolicited informational meetings is to avoid private entities spending unnecessary time and resources on the development of unsolicited proposals that do not directly meet the State's transportation needs.*

*(f) A formal review and screening of an unsolicited proposal will be undertaken only after a private entity completes the formal submission process.*

*(6) An unsolicited proposal shall be conceptual, containing only the information required for the Steering Committee to conduct a high-level review and screening of the proposed public-private partnership concept.*

*(7) An unsolicited proposal shall include, at a minimum, the following:*

- (a) An executive summary of the major elements of the unsolicited proposal, including:*
  - (i) The title of the proposed concept;*

- (ii) A brief description and justification of the proposed concept;
- (iii) The name and address of the public-private partnership private entity; and
- (iv) A signature of an individual authorized to act on behalf of and bind the private entity, along with the individual's telephone number and email address;
- (b) Summary of the experience, expertise, technical and financial competence, and professional qualifications of the private entity;
- (c) A summary narrative that describes:
  - (i) The key components of the proposed public-private partnership concept;
  - (ii) Preliminary ideas of public-private partnership scope, schedule, and project lifecycle considerations;
  - (iii) Preliminary qualitative evaluation of relevant benefits and costs;
  - (iv) Preliminary description of financial concepts;
  - (v) The relevance of the public-private concept to other transportation facilities or other public infrastructure assets for which the Authority is responsible; and
  - (vi) A statement of the public-private partnership concept's consistency with existing governmental transportation planning or project documents and governing law;
- (d) A high-level description of financial feasibility that includes:
  - (i) Amounts and sources of any public funding that may be required;
  - (ii) How estimated funding from all relevant sources would be sufficient to support all asset delivery activities, including design, property and equipment acquisition, construction, long-term capital replacement activities, financing, operations, and maintenance; and
  - (iii) How estimated funding from all relevant sources would be sufficient to provide for contingencies to meet the terms and conditions under which the public infrastructure asset shall be handed back to the Authority at the expiration or termination of the public-private partnership agreement;
- (e) Rationale for a public-private partnership delivery method relative to a conventional project delivery approach;
- (f) A clear indication of any proprietary information that should be protected in accordance with State Finance and Procurement Article, §10A-301(d)(2), Annotated Code of Maryland; and
- (g) Additional information, as necessary, to support a high-level screening process, as outlined in Regulation .06C(1) of this chapter.
- (8) Unsolicited Proposal Fee.
  - (a) Each unsolicited proposal that addresses a project already in the Consolidated Transportation Program for which the Authority is responsible shall be accompanied by a check in the amount of \$10,000 made payable to the Maryland Transportation Authority.
  - (b) Each unsolicited proposal that does not address a project already in the Consolidated Transportation Program and concerns a public infrastructure asset for which the Authority is responsible shall be accompanied by a check in the amount of \$25,000 made payable to the Maryland Transportation Authority.
  - (c) The Authority reserves the right, in its sole discretion, to determine whether submitted alternates and variations of proposals will be considered separate proposals that require separate proposal fees.
  - (d) Unsolicited proposal fees are nonrefundable.

#### **.06 Screening Process.**

A. The purpose of screening is to assist the Authority in determining the appropriateness, viability, and effectiveness of delivering a public infrastructure asset for which it is responsible using a public-private partnership methodology.

B. The screening methodology is a means to systematically apply uniform and consistent factors to both internally generated public-private partnership concepts and unsolicited public-private partnership concepts.

##### **C. Two-Phase Screening Process.**

###### **(1) High-Level Screening Phase.**

- (a) Factors to be considered during the high-level screening may include, but are not limited to:
  - (i) Ability to meet State transportation, socio-economic development, workforce, and environmental goals;
  - (ii) Technical implementation considerations;
  - (iii) Potential need for coordination with other State agencies, including but not limited to the Department;
  - (iv) Opportunities to accelerate asset delivery implementation;
  - (v) Ability to allocate and share risks in a cost-effective manner that is consistent with State law and in the best interests of the State;
  - (vi) Opportunities to reduce reliance on public funds or finance, or both;
  - (vii) Public affordability considerations;
  - (viii) Potential for increased revenue generation and revenue sharing with the Authority; and
  - (ix) Potential impact on the workforce, including existing State employee workforce, if any.
- (b) For internally generated public-private partnership concepts, the high level screening is conducted based on the Public-Private Partnership Candidate Concept Application and supporting information available from the internal sponsor.

(c) For unsolicited public-private partnership concepts, the high-level screening is conducted based on information provided by the private entity in an unsolicited proposal and any supplementary information available within the Authority.

(d) Based on the findings of the high level screening, the Steering Committee may recommend to the Executive Director that specific public-private partnership concepts be advanced or not be advanced to the detailed-level screening phase.

(e) Based on the findings of the high-level screening and the recommendation of the Steering Committee, the Executive Director may recommend to the Chairman and members of the Authority that specific public-private partnership concepts be advanced or not be advanced to the detailed-level screening phase.

(f) The determination is to be made by the Chairman and members of the Authority to advance or not advance a public-private partnership concept to the detailed-level screening phase.

(g) Within 45 days after receipt of a Public-Private Partnership Candidate Concept Application or an unsolicited proposal, the Steering Committee shall:

(i) Notify the internal sponsor or private entity of the date that the concept will be presented to the Chairman and members of the Authority for the determination of whether the project will be advanced or not advanced to the detailed-level screening phase; or

(ii) Request additional information from the internal sponsor or private entity.

**(2) Detailed-Level Screening Phase.**

(a) The detailed-level screening phase is more comprehensive than the high-level screening phase.

(b) In addition to the findings of the high-level screening phase, analyses and documentation during the detailed-level screening phase may include some or all of the following categories:

(i) Scope, design concepts, and phasing schedules;

(ii) Compliance with federal and State environmental and transportation planning requirements;

(iii) Technical and financial feasibility analyses;

(iv) Evaluation of operations and maintenance requirements;

(v) Asset lifecycle costs and revenue estimates;

(vi) Risk assessment of key asset delivery elements;

(vii) In the event that a public-private partnership delivery method may have a potential impact on the workforce or existing State employees, a preliminary assessment of the potential impact and potential options for mitigating that impact, including the protections allotted to State employees that are in effect at the time that the P3 agreement is approved by the Board of Public Works; and

(viii) Other analyses to determine the appropriateness, viability, and effectiveness of a public-private partnership delivery method.

(c) The types of analyses and resources committed to a detailed-level screening phase will be determined by the Steering Committee and the Executive Director, on a case-by-case basis.

(d) Based on the findings of the detailed-level screening, the Steering Committee will make recommendations to the Executive Director as to which public-private partnership concepts should be advanced and which should not be advanced to submission of a presolicitation report.

(e) Based on the findings of the detailed-level screening and the recommendation of the Steering Committee, the Executive Director may recommend to the Chairman and members of the Authority that specific public-private partnership concepts be advanced or not be advanced to submission of a presolicitation report.

(f) The determination is to be made by the Chairman and members of the Authority to advance or not to advance a public-private partnership concept to submission of a presolicitation report.

(g) Within 45 days after advancement of a public-private partnership concept to the detailed-level screening analysis phase, the Steering Committee shall:

(i) Notify the internal sponsor or private entity of the date that the concept will be presented to the Chairman and members of the Authority for the determination of whether the project will be advanced or not advanced to submission of a presolicitation report; or

(ii) Request additional information from the internal sponsor or private entity.

**.07 Presolicitation.**

**A. Presolicitation Report Development.**

(1) The development of a presolicitation report for submission involves a broad range of activities that may run concurrent to the high-level and detailed-level screening phases.

(2) In consultation with the Steering Committee, the Executive Director shall determine:

(a) The tasks required for the development of a presolicitation report; and

(b) The responsible parties within the Authority.

(3) The development of a presolicitation report containing all elements required in State Finance and Procurement Article, §10A-201(b)(1), Annotated Code of Maryland, may entail a variety of tasks, including but not limited to:

(a) Analyses and documentation, including some or all of the following categories:

(i) Scope, design concepts, and phasing schedules;

- (ii) Compliance with federal and State environmental and transportation planning requirements;
- (iii) Technical and financial feasibility analyses;
- (iv) Evaluation of operations and maintenance requirements;
- (v) Asset lifecycle costs and revenue estimates;
- (vi) Risk assessment of key asset delivery elements;
- (vii) Other analyses determined to be necessary to determine the appropriateness, viability, and effectiveness of a public-private partnership delivery method; and
- (viii) In the event that a public-private partnership delivery method may have a potential impact on existing State employees, an analysis of the potential impact and potential options for mitigating that impact;
- (b) Issuing public requests for information to obtain additional information that may help the Authority confirm or refine key assumptions; and
- (c) Organizing public industry forums to obtain additional information that may help the Authority confirm or refine key assumptions.
- (4) If it is determined that the proposed public-private partnership delivery method will impact existing State employees, the Authority shall arrange for meetings between the Executive Director, or the Executive Director's designee, and representatives of the affected bargaining units, if any, for a preliminary discussion of potential impact and potential options for mitigating the impact.
- B. The Authority may not issue a public notice of solicitation for a public-private partnership until:
  - (1) The Chairman and members of the Authority approve the presolicitation notice;
  - (2) A presolicitation report concerning the proposed public-private partnership is submitted to the budget committees and the Department of Legislative Services in accordance with State Finance and Procurement Article, §10A-201(a), Annotated Code of Maryland, that contains the information required by State Finance and Procurement Article, §10A-201(b)(1), Annotated Code of Maryland; and
  - (3) The Authority has sought and received:
    - (a) The official designation of the Board of Public Works of the public infrastructure asset as a public-private partnership; and
    - (b) The approval of the Board of Public Works of the method of solicitation.

## **.08 Solicitation Process.**

### **A. General.**

- (1) The solicitation process for public-private partnerships shall be competitive, regardless of whether the public-private partnership concept originated internally within the Authority or from an unsolicited proposal.
- (2) For each private entity that responds to a public notice of solicitation, the Authority shall make a responsibility determination in accordance with State Finance and Procurement, §10A-202(c), Annotated Code of Maryland.

### **B. Solicitations Relating to Concepts Described in Unsolicited Proposals.**

- (1) The competitive solicitation process shall protect any proprietary information that is identified as such and included in the unsolicited proposal in accordance with State Finance and Procurement, §10A-301(d)(2), Annotated Code of Maryland.
- (2) An individual or firm that has submitted an unsolicited proposal may participate in any subsequent competitive solicitation process, in accordance with State Finance and Procurement, §10A-301(e), Annotated Code of Maryland.
- (3) The private entity shall be responsive to all components of the subsequent competitive solicitation process even if certain information requested by the subsequent competitive solicitation process has already been submitted as part of the private entity's unsolicited proposal.
- (4) The Authority reserves the right to issue a public notice of solicitation relating to a concept described in an unsolicited proposal after the rejection or termination of the evaluation of the unsolicited proposal or any competing proposals.

### **C. Multistep Solicitation Process.**

- (1) The Authority may use a multistep solicitation process that includes, but is not limited to, some or all of the following steps:
  - (a) Issuance of a request for qualifications;
  - (b) Preproposal conference;
  - (c) Issuance of a draft request for proposals;
  - (d) Industry review meetings; and
  - (e) Issuance of a final request for proposals.
- (2) The determination to use some or all of the solicitation steps will be on a case-by-case basis.
- (3) The Authority may include additional solicitation steps on a case-by-case basis as set forth in the public notice of solicitation.
- (4) Request for Qualifications.
  - (a) The purpose of a request for qualifications is to:
    - (i) Identify private entities that qualify as participants in the solicitation process; and

(ii) Identify a shortlist of the highest qualified candidates for continuing in the solicitation process, which are the shortlisted private entities.

(b) Based on the responses to the request for qualifications, the Authority may:

(i) Identify one or more private entities as qualified; and

(ii) Develop a shortlist of one or more of the highest qualified candidates for continuing in the solicitation process, which are the shortlisted private entities.

(c) Only candidates that have been selected to continue in the solicitation process as shortlisted private entities are eligible to:

(i) Participate in industry review meetings;

(ii) Receive drafts of the request for proposals;

(iii) Submit comments on drafts of the request for proposals;

(iv) Receive the final request for proposals; and

(v) Submit a written proposal in response to the final request for proposals.

(5) Preproposal Conference.

(a) The purpose of a preproposal conference is to facilitate better understanding of solicitation requirements and processes.

(b) A preproposal conference may be scheduled by the Authority after the initial public notice of solicitation for a public-private partnership.

(c) Preproposal conferences are open to all interested private entities.

(6) Draft Request for Proposals.

(a) As part of a multistep solicitation process, the Authority may issue one or more draft requests for proposals to shortlisted private entities.

(b) Draft requests for proposals may include, but are not limited to:

(i) Instructions to private entities for responding to the request for proposals;

(ii) Technical provisions;

(iii) Scope of work; and

(iv) Public-private partnership agreement key terms and components.

(c) Only shortlisted private entities may submit written or verbal comments and questions concerning the draft request for proposals to the Authority to the extent permitted by the solicitation process.

(d) The Authority may use comments and questions from shortlisted private entities for subsequent revisions to the draft request for proposals.

(7) Industry Review Meetings.

(a) The Authority may conduct industry review meetings as part of a multistep solicitation process.

(b) The purpose of industry review meetings is to:

(i) Obtain comments and make revisions to the draft request for proposals;

(ii) Obtain the best value for the State;

(iii) Facilitate the full understanding regarding the requirements of the State for the public-private partnership concept;

(iv) Facilitate the full understanding of the contents of the proposals required to be submitted by shortlisted private entities; and

(v) Finalize the requirements for the request for proposals.

(c) Agreement negotiations may not be conducted during industry review meetings.

(d) Industry review meetings are restricted to candidates that have been selected to continue in the solicitation process as shortlisted private entities.

(e) Industry review meetings may be:

(i) Joint workshops with all shortlisted private entities invited to participate; or

(ii) One-on-one meetings between the Authority and individual shortlisted private entities.

(f) The Authority may use comments and questions obtained from shortlisted private entities through industry review meetings for subsequent revisions to the draft request for proposals.

(8) Final Request for Proposals.

(a) In a solicitation process involving a request for qualifications phase, a final request for proposals shall be issued to shortlisted private entities selected to continue in the solicitation process.

(b) The contents of the final request for proposals may be based on information gathered during earlier solicitation phases, including but not limited to:

(i) Preproposal conference;

(ii) Request for qualifications; and

(iii) Industry review meetings.

(c) The Authority may issue a final request for proposals without previously:

- (i) Issuing a request for qualifications;
- (ii) Issuing a draft request for proposals; or
- (iii) Conducting industry review meetings.

*(9) Information Availability During Solicitation.*

(a) The Authority may make relevant technical and financial information available to private entities through an electronic data room.

(b) The Authority may respond to relevant additional information requests by private entities in support of due diligence reviews, including requests for site inspections.

(c) Information or site access provided to individual private entities pursuant to an additional information request shall also be made available to all other interested private entities if a shortlist of qualified private entities has not yet been established.

(d) Information or site access provided to individual shortlisted private entities pursuant to an additional information request shall also be made available to all other shortlisted private entities if a shortlist of qualified private entities has been established.

(e) Private entities may be required to sign confidentiality agreements prior to release of information deemed confidential.

*D. Reimbursement.*

(1) The Authority may reimburse a private entity in accordance with State Finance and Procurement Article, §10A-202(f), Annotated Code of Maryland.

(2) If the Authority elects to reimburse a private entity, the specific terms, conditions, method, and timing for reimbursing a private entity will be described in the public notice of solicitation associated with the specific public-private partnership.

(3) The reimbursement terms and conditions may include the requirement for the private entity to execute a stipend agreement and to transfer rights to use the work product produced by the private entity during the solicitation process to the Authority as a condition to receiving reimbursement.

(4) The Authority will only consider reimbursement for shortlisted private entities.

*(5) Maximum Reimbursement Amount.*

(a) The Authority may not provide a reimbursement in excess of \$3,000,000 to an individual private entity for costs incurred in response to the solicitation of a public-private partnership.

(b) The Authority may establish a reimbursement less than the maximum prescribed in §D(5)(a) of this regulation on a case-by-case basis.

(6) Except as set forth in the solicitation documents, should the solicitation process or negotiations be suspended, discontinued, or terminated, the private entity shall have no rights of recourse, including reimbursement of the private entity's unsolicited proposal review fees or costs associated, directly or indirectly, with the solicited or unsolicited proposal developments.

*E. Reservation of Rights.*

(1) The Authority reserves all rights available by law and in equity in its public-private partnership solicitation process, including without limitation the right to:

(a) Reject any and all submittals, responses, qualifications, and proposals, whether solicited or unsolicited, at any time or for any reason;

(b) Issue addenda, supplements, and modifications to a public notice of solicitation;

(c) Cancel a solicitation in whole or in part at any time prior to the execution of a public-private partnership agreement, subject to any agreed upon compensation to proposers set forth in the solicitation documents or pursuant to State Finance and Procurement Article, §10A-202(f), Annotated Code of Maryland;

(d) Issue a new public notice of solicitation after withdrawal of a public notice of solicitation;

(e) Establish protocols for private entities to remedy minor deficiencies in responses to requests for qualifications or proposals within a specified period of time;

(f) Disqualify any private entity at any point during a solicitation process for violating any rules or requirements of the solicitation set forth in the public notice of solicitation, in any communication from the Authority, or as otherwise set forth by applicable law;

(g) Determine whether to pursue federal credit assistance on behalf of the private entities;

(h) Publicly disclose information received during the solicitation process as governed by law and by the public notice of solicitation, pursuant to State Finance and Procurement, §10A-203(b), Annotated Code of Maryland;

(i) Exercise any other rights reserved or afforded to the Authority under applicable law and the public notice of solicitation; and

(j) Disqualify any private entity for any conflict of interest or other conduct manifesting a lack of responsibility.

(2) Additional reservations of the Authority's rights may be included in the solicitation documents for a public-private partnership.

**.09 Evaluation, Negotiation, and Award.**

*A. Evaluation of Submitted Responses.*



(1) The Authority will conduct evaluations of submitted responses to requests for qualifications and submitted proposals using the information submitted by the private entity.

(2) Submitted information will be evaluated against the requirements of the solicitation and the evaluation criteria that the Authority specifies in the solicitation for the particular public-private partnership opportunity;

(3) The objective of this evaluation process is to select the private entity that provides the best value solution for the State;

(4) The Authority's evaluation criteria shall be clearly set forth in each request for solicitation; and

(5) A failure to provide all requested information may result in the Authority eliminating a response or proposal from further consideration.

B. The processes for evaluating submitted responses to requests for qualifications and for evaluating submitted proposals will be described and submitted to the Board of Public Works as part of the presolicitation process the Board of Public Works is being asked to approve.

C. The Executive Director shall establish one or more evaluation committees on a case-by-case basis that may:

(1) Be composed of:

(a) Authority employees;

(b) Department employees; and

(c) Other State employees;

(2) Review statements of qualifications;

(3) Review proposals; and

(4) Seek advice from the Authority, the Department, other State agencies and State employees, and outside experts and consultants during the evaluation process.

D. Best and Final Offers.

(1) After the evaluation of all responsive proposals, the Executive Director may request best and final offers from private entities determined by the evaluation committees to be eligible to submit best and final offers.

(2) The Executive Director may request multiple iterations of best and final offers.

(3) A best and final offer process is not required.

E. After an apparent best value private entity has been selected by the evaluation committees, in consultation with the Chairman and members of the Authority, the Executive Director may enter into negotiations with that private entity.

F. The Executive Director may determine that negotiations be completed by a negotiations committee either composed of members of the evaluation committees or established separately from the evaluation committee that may:

(1) Be composed of:

(a) Authority employees;

(b) Department employees; and

(c) Other State employees;

(2) Review the apparent best value private entity's response to the request for proposals;

(3) Review the apparent best value private entity's best and final offer, if any; and

(4) Receive assistance from outside experts and consultants during the evaluation process.

G. The Authority, in its sole discretion, may initiate negotiations with a private entity other than the apparent best value private entity if:

(1) Negotiations with the apparent best value private entity are unsuccessful; or

(2) The apparent best value private entity does not provide sufficient information or timely feedback to finalize the agreement in accordance with the Authority's schedule for the public-private partnership solicitation.

H. After completion of successful negotiations, the negotiations committee shall recommend a best value private entity to the Chairman and members of the Authority for review and approval.

I. After the Chairman and members of the Authority provide approval of the best value private entity, the Authority shall:

(1) Finalize and prepare the public-private partnership agreement for execution, in coordination with the best value private entity;

(2) Commence the final agreement review process in accordance with State Finance and Procurement, §10A-203, Annotated Code of Maryland; and

(3) Arrange for meetings between the Executive Director or their designee and appropriate bargaining unit representatives to provide notice and discuss plans for impacted State employees, in the event that the proposed public-private partnership delivery method has an impact on existing State employees.

J. Final Agreement Review.

(1) The Executive Director shall comply with the final agreement review process established in State Finance and Procurement, §10A-203, Annotated Code of Maryland.

(2) A final agreement report shall accompany a final agreement submitted under State Finance and Procurement, §10A-203, Annotated Code of Maryland, containing the following items, if relevant:

(a) The financial plan, including annual cash flows, for any public-private partnership including:

(i) State contributions;

- (ii) Federal loans or credit assistance;*
  - (iii) Private investments;*
  - (iv) Local contributions; and*
  - (v) Other funding contributions;*
  - (b) The ongoing financial costs and increases associated with any operating and maintenance contracts;*
  - (c) The impact any public-private partnership agreement may have on the Authority's debt affordability measures;*
  - (d) The authority a private entity may have to recover its investment through tolls or other fees, including how future increases in tolls or other fees may increase;*
  - (e) An analysis of why the proposed agreement is more advantageous than a conventional project delivery;*
  - (f) A description, including the estimated value, of any land, buildings, or other structures or assets that are transferred or exchanged with a private entity as part of the public-private partnership;*
  - (g) A summary of the performance measures included in the ongoing operation of the public-private partnership;*
  - (h) A summary of the penalties associated with nonperformance relating to the ongoing maintenance and operation;*
- and*
- (i) A plan for how the long-term operating and maintenance contract will be overseen by the Authority.*

**.10 Delivery.**

*Procedures for Public-Private Partnership Agreements. In the development of a public-private partnership agreement, the Authority shall comply with the provisions established in State Finance and Procurement Article, §10A-401, Annotated Code of Maryland.*

BRUCE W. GARTNER  
Executive Director